IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3497 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M.B.ACHARYA

Versus

SURESHBHAI V PATEL

Appearance:

1. Special Civil Application No. 3497 of 2004

MR AK CLERK for Petitioner No. 1

MR SEJPAL for Respondent No. 1

MR MD PANDYA for Respondent No. 2

MR MR MENGDEY, AGP, for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 26/03/2004

ORAL JUDGEMENT

#. Leave to add Registrar of Trade Unions, Ahmedabad, as party respondent No.3 is granted. Cause title be corrected by the Registry forthwith.

#. Rule. Mr.Sejpal, learned counsel appearing for respondent No.1 waives service of Rule. Mr.M.R.Mengdey, learned Assistant Government Pleader, who is directed by the Court to appear on behalf of the respondent No.3 Government authority, waives service. So far as respondent No.2 is concerned, Mr.M.D.Pandya appears and waives service.

#. The present petition is preferred by the petitioner challenging the legality and validity of the order dated 9.3.2004 passed by the Industrial Court, Ahmedabad, below Ex.2 in Reference (TU) No.1 of 2004.

#. The short facts of the case are that the petitioner is claiming the post of Secretary General of the Gujarat Vidhyut Technical Karmachari Mandal (hereinafter referred to as "the union"), registered under the Trade Unions Act. The respondent No.1 is also claiming his status as Secretary General on the basis of so-called election dated 12.10.2003. However, it is the case of petitioner that as such, election was not held and the members present continued with the proceedings which also is not genuine. It is the case of respondent No.1 that since the period of three years is over, the term for the post of Secretary General as well as the President of the union is over and therefore, such persons, whose tenure is over, cannot be allowed to continue to hold the office. It has been further submitted on behalf of respondent No.1 that the election held on 12.10.2003 at Pavagadh is genuine.

#. I would have examined the matter further, however, after some discussion, there is consensus between the learned counsel appearing for the petitioner as well as respondent No.1 that if the election for the post of President and Secretary General of the union is held afresh on the basis of position of its members prevailing as on 12.10.2003, they have no objection for the same. However, grievance was voiced is that again, a dispute may arise for genuineness of election and therefore, let such election be held in the presence of some Government officer who can control and supervise the election and those who are elected at the said election shall be allowed to assume the office.

#. Mr.M.R.Mengdey, learned Assistant Government Pleader, submitted that if this Court so directs for supervising

and holding the election, an officer be deputed by respondent No.3 at the cost of union.

#. Having considered the above and with a view to see that democratic principles are maintained and those who are having genuine majority of members are allowed to assume the office, I find that if the election is ordered, it will put an end to the whole litigation which is pending before the Industrial Court. Further, those who are genuinely elected and are having the mandate of voters who are members of the union, should be allowed to assume the office for a period of three years from 12.10.2003.

#. Learned counsel for both the sides submitted that there are number of members of the union and therefore, union will have to incur expenses. Mr.Clerk submitted that since at present the President Mr.V.C.Brahmbhatt is holding the charge, let him continue to operate till fresh election is held within stipulated time as may be ordered by this Court. There is also consensus amongst learned counsel appearing for both the sides that if the election is ordered to be held at Ahmedabad, either party has no objection.

Mr.Sejpal, learned counsel for respondent No.1 has also assured the Court that after the election is held, and newly elected office bearers are allowed to assume the office, the main dispute being Reference (TU) No.1 of 2004 shall be withdrawn from the Industrial Court.

#. Under the above circumstances, with a view to see that democratic principles are maintained and whole litigation is put an end to and that there is consensus amongst the main contesting parties to the proceedings, I find that the following directions shall meet the ends of justice:

1) The respondent No.3 shall depute an officer not below the rank of Class-II, to fix the date and to supervise the election for the post of President and Secretary General of the union and the said officer shall also control the election and shall supervise the election at the time when the voting takes place. It will be open to such officer to take police assistance, if he is of the view that police force may be required for maintaining law and order situation. The process for deputation and holding the election shall be completed within a period of six weeks from today

and the venue of election at Ahmedabad shall be as per decision of the officer concerned.

2) So far as expenses for holding the election including remuneration of the officer are concerned, the same shall be borne by the union and the present president Shri V.C.Brahmbhatt shall be allowed to incur expenses for such election on behalf of the union. However, incurring of expenses shall also be under the supervision of the officer who may be nominated by respondent No.3 for holding and supervising the election.

3) It is further directed that after the election is held and report of the same is furnished by such officer to respondent No.3, within 48 hours from submission of such report, newly elected President and Secretary General shall be allowed to assume the office of the President and Secretary General of the aforesaid union, as the case may be, and if required, the respondent No.3 shall also pass consequential order for such purpose.

4) Until election is over and the newly elected office bearers assume their offices, no major policy decision shall be taken and the office bearers of the union shall continue to look after routine activities.

##. In view of the aforesaid directions, the order passed by the Industrial Court dated 9th March, 2004, below Ex.2, in Reference (TU) No.1 of 2004 shall not remain in operation.

##. The petition is allowed in terms of the above directions. Rule is made absolute accordingly. No costs.

(JAYANT PATEL, J.)

(sunil)